

# DECLARATIONS IN SUPPORT OF ORDER TO SHOW CAUSE

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**JOSEPH REIVER,**

**Plaintiff,**

**v.**

**THE CITY OF NEW YORK,**

**Defendant.**

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**) CIVIL ACTION NO. 1:25-cv-01376-MKV**

## DECLARATION OF JOSEPH REIVER

JOSEPH REIVER declares under penalty of perjury under the laws of the United States that the following statements contained in this Declaration are true and correct.

1. I am the Plaintiff in this action, asserting my rights under the Visual Artist Rights Act (VARA), 17 U.S.C. §106A, and submit this Declaration in support of my motion to restrain and enjoin Defendant The City of New York (“Defendant”), from destroying, distorting, mutilating, or otherwise modifying Elizabeth Street Garden (the “Garden”), a work of visual art that I jointly created with my father Allan Reiver.

2. The Garden is currently managed, maintained, and operated by Elizabeth Street Garden, Inc., a volunteer-based not-for-profit corporation. I am the Executive Director of this entity. Without unfettered access to the Garden, Elizabeth Street Garden, Inc. cannot maintain the Garden.

3. The Garden, located at 207 Elizabeth Street, New York, NY 10012, in the neighborhood of Little Italy, in New York, New York, is a beautifully landscaped, publicly accessible open green space comprising 20,110 square feet, incorporating numerous sculptural elements.

4. However, back in 1991, when my father, through this wholly owned company Elizabeth Street, Inc., obtained a lease of the lot from Defendant it was in disrepair, a dismal junk yard.

5. To turn the junk yard into the work of visual art that it is today, initially my father, and subsequently joined by me, created an integrated whole sculptural work of visual art, comprised of foundational elements and repurposed and reclaimed antique sculptures, carefully selected to emphasize the work's neo-classical theme. The fixed inorganic elements of the work are enhanced by plantings, specially curated to accentuate the reclaimed sculptures. The physical components of the Garden are complemented by the collective and participatory process through which the public interacts with the Garden, qualifying the work as an exemplary social sculpture.

6. To create the work of visual art that the Garden is, a detailed step-by-step approach was followed. Initially, the lot was cleared, creating a blank canvas. Thereafter, the foundational structure of the Garden was designed and installed. It is comprised of a front lawn, two pear trees, and a broad gravel walkway that runs from the entrance of the Garden, through the east-west axis of the lot, terminating at a barn-like lean-to in the back. To develop a neo-classical theme, prominent stone and granite balustrades were strategically placed to border the walkway, extending for most of its length on each side. There is a consistent line of the work that runs through the Garden bordering main walkways and intentionally creating small pocket areas to "find" or sit in. The main portion of the balustrade tees off to create two sections where people can walk through gardening beds. The foundational elements give way to these pocket areas with the intention of inviting visitors to interact with the work, sit amidst it, and move through it.

7. After completion of the foundation, sculptural elements were placed throughout the Garden, comprising of figure sculptures, primarily of iconic animals or mythical creatures, an

iron gazebo, Greek style columns, and the iconic iron gates at the entrance of the Garden.

8. Each sculptural element selected for the Garden enhances the neo-classical theme. Thus, Roman style sphinxes are combined with the first balustrade section to act as guardians of the entrance and exit. The standing lions placed on either side of the main walkway are there as guardians to the entrance with more aggressive features showing their teeth. Further behind at the center of the garden there are the two resting lions considered by many to be the most iconic element of the Garden.

9. The fixed inorganic elements of the Garden are complemented by plantings that have specifically been curated to accentuate the sculptural elements. For example, creeping ivy has been specifically planted to grow along the base of both the resting lions so that when the ivy grows out it is trained to grow along the lions mane and create a living Ivy mane for the summer season. The selection of plantings takes into consideration seasonal changes incorporating that into the work of art.

10. The integration of the sculptural elements, all featuring a neo-classical theme, with the Garden's foundational elements, characterized by the principal east-west principal path and the prominent balustrades, supplemented by the plantings, create a single unified and thematically integrated sculpture.

11. The physical components of the Garden are enhanced and complemented by the collective and participatory process through which the public interacts with the Garden. As early as 2005, after the foundational structure of the Garden was substantially completed, the public was invited to visit the Garden through my father's gallery, located next door to the Garden. Since in or about 2013, once the public's safety and security for the Garden could be ensured, the social aspect of the Garden was significantly expanded, engaging the community as active

participants in its evolving artistic narrative.

12. Examples of such engagement, initiated and organized by me, include without limitation, open calls to artists, which showcase artwork inspired by the Garden, musical performances, poetry readings, movie screenings, wellness classes like tai chi and yoga, tea ceremonies, educational workshops teaching sustainable stewardship and planting in the Garden to local public-school students, (K-5th grade), and equinox and solstice celebrations.

13. These programs and events, hosted in the Garden, along with the evolving nature of the Garden's design, emphasize the harmonious relationship between nature, art, and human connection. The Garden is not just a physical space; it is a dynamic, living entity, embodying a blend of neoclassical sculptures, nature, beauty, and community interaction.

14. As such the Garden reflects the principles of social sculpture, transforming the physical space into a hub of artistic and communal activity, making the Garden an exemplary social sculpture, deeply tied to public interaction, communal stewardship, and the physical environment. Continued access to the Garden by the public is required to maintain the social sculpture of the Garden.

15. While neither my father nor I had formal artistic training, in the 1970's my father had restored derelict properties in Denver, Colorado, by incorporating therein culturally and historically important architectural artifacts and sculptures. He developed these artistic skills further in the late 1980's to design and create a garden on a Metropolitan Transit Authority lot on the upper east side. By virtue of this experience, my father had become a representative of the Outsider Art School, a legitimate school of art distinguished predominantly by work created by self-taught artists like my father.

16. When I joined my father in the design of the Garden, culminating in its present integrated whole, my father passed on to me his acquired experience in repurposing and placing reclaimed antique sculptures and garden design.

17. Early in my training, I worked with my father around the garden, helping him place various sculptural elements and learning about his sense of design for the garden, along with how to maintain and move larger sculpture elements and repurpose reclaimed pieces to integrate them into a cohesive artistic landscape. He would show me how to place heavier pieces in a way that didn't damage the stone, and I would work with him on parts of the design.

18. As I gained more experience over the years, I took on greater responsibility in the design process, such as placing the standing lions on either side of the main walkway and resting lions on either side of the main balustrade section. This evolution in my role was not only about the physical arrangement of the sculptures but also about maintaining the Garden's artistic integrity and thematic consistency.

19. My father taught me to recognize the beauty in forgotten or discarded things and to breathe new life into them by finding their place within the Garden. This non-traditional approach to art and design has guided me over the years about how to shape a place while accepting how it grows organically, balancing vision with the need to listen to the garden.

20. This training, coupled with my experience in implementing our joint vision for the Garden, resulted in me becoming recognized, in my own right as a representative of the Outsider Art School.

21. The Garden, jointly authored by my father and me, is our signature artistic creation.

22. I have over 12 years of experience in Theatre Studies and Acting at various theatre institutions including New York University (NYU), the Royal Academy of Dramatic Art

(RADA) in London, and Trinity College in Dublin.

23. Along with theatre studies and acting, I am also a self-taught photographer with 10 years of experience working with 35mm and medium format film photography. I mainly photograph landscapes and portraiture, often combining the two to explore the relationship between people and their environments. I also enjoy photographing other artists working in different mediums.

24. My photography has been featured in Vogue Magazine Japan (<https://www.vogue.co.jp/fashion/article/sakurako-suzuki-heaven-coperni-glass-bags>), Anthropologie (<https://www.anthropologie.com/stories-nyc-soho>), and displayed on my website <https://www.josephreiver.com/>.

25. My work with photography and gardens, including Elizabeth Street Garden, has been a significant part of my practice, allowing me to contemplate the integration of nature, art, community, and a sense of place.

26. The Garden has achieved recognition as a work of recognized stature, both as a physical work of visual art and as an example of social sculpture inspiring prominent members of the artistic community.

27. Moreover, the Garden has achieved local and nationwide recognition since its completion by experts and non-experts alike and has been the subject of numerous articles in the press and in on-line publications. (See, Declarations annexed to the present Motion and Exhibits 4-16, attached to the Complaint and referenced in ¶¶ 61-65 of the Complaint.)

28. Notwithstanding such recognition, Defendant plans to destroy the Garden by constructing on the property a 7-story mixed-use building on the site including 123 units of housing. The proposed construction and related clearing of the lot, will destroy the Garden

and/or distort, mutilate, or otherwise modify the Garden, which will be prejudicial to my honor and reputation.

29. Defendant terminated the lease of Elizabeth Street, Inc. to the lot on which the Garden is located. By decision, verdict and order, dated May 8, 2024, the Civil Court of the City of New York awarded Defendant a final judgment of possession. After appeal, on February 26, 2025, the New York State First Judicial Department Appellate Term, Supreme Court affirmed the lower court's decision.

30. A Warrant of Eviction, dated March 7, 2025 has issued, providing for an eviction as early as March 24, 2025. (*See*, Exhibit "A" attached to the Memorandum in Support of this Motion.) Defendant intends to move forward with the Project once the lessee is evicted.

31. The only way to stop this eviction is with a Court order prior to eviction that temporarily stays the eviction.

32. Once eviction occurs, the public's access to the Garden will terminate as will the social sculpture aspect of the Garden.

33. The Garden is not merely a public space but a work of visual and social art that is now known throughout the city and the world. The destruction, distortion, mutilation, or modification of Elizabeth Street Garden would not only dismantle a living work of art that my father and I carefully crafted over the years, but it would also cause significant harm to me and my work. The Garden, as a collaborative creation, reflects my vision and artistic approach. It serves as an extension of myself.

34. My integrity lies in the careful curation and presentation of anything I create, both visually and conceptually. The Garden is a product of years of thought, labor, and creative energy. Any destruction or alteration would fundamentally compromise the very essence of what



I've contributed as its co-author. The Garden represents not just a physical space but an evolving artistic expression that has been nurtured over the years. Its destruction or modification would be a loss of a piece of my identity as an artist.

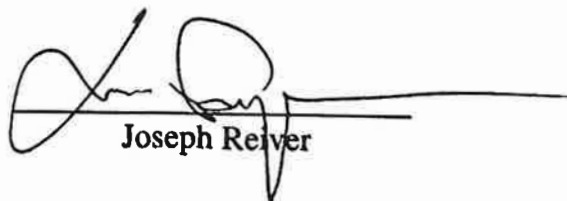
35. This harm is not just personal; it affects the broader artistic community and the Garden's many visitors who have drawn inspiration from its unique blend of art and nature. The Garden is not only a space of respite and beauty but a testament to what can be achieved when artists invest their time and energy into transforming public spaces into meaningful, communal works of art.

36. To protect my rights in the integrity of the Garden, as provided by the Visual Artist Rights Act (VARA), 17 U.S.C. § 106A, *et seq.* I filed this action on February 18, 2025, and served Defendant on February 20, 2025, seeking, *inter alia*, an injunction preventing any intentional or negligent destruction, distortion, mutilation, or other modification of the Garden.

37. Because Defendant's stated plans to evict the lessee and commence with the Project, potentially as early as March 24, 2025, will irrevocably destroy, distort, mutilate, or otherwise modify the Garden, the *res* in this action, a temporary restraining order, preserving the *status quo* of the Garden for the pendency of this litigation, now is required.

WHEREFORE, I respectfully request that this Court grant a temporary restraining order and preliminary injunction to restrain and enjoin Defendant from destroying, distorting, mutilating or otherwise modifying the Garden pending resolution of this action.

Executed at New York, New York, this 7 day of March, 2025.



Joseph Reiver

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOSEPH REIVER,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.

CIVIL ACTION NO.

## DECLARATION OF MARA MILLER

**MARA MILLER**, under penalty of perjury, states the following:

## BACKGROUND

I am writing in support of a determination that the Elizabeth Street Garden (“ESG”) is a significant site-specific integrated work of visual art entitled to protection under the Visual Artist Rights Act of 1990 (“VARA”) Section 106A of the US Copyright Act. I graduated from Cornell University as a College Scholar, earned a Master of Arts degree from the University of Michigan with an art history thesis, and earned a Doctor of Philosophy degree in philosophy from Yale University, where I wrote my dissertation on “Gardens as Art.”

I specialize (*inter alia*) in the fields both of gardens and of aesthetics and philosophy of art; my book, *The Garden as an Art* (SUNY Press, 1994), is the first to address why gardens are works of art and why the grounds for dismissing their status as such are inadequate. (Just published in 2024, by Oxford University Press, is a second book on related views of the subject by David Fenner and Ethan

Fenner, *The Art and Philosophy of the Garden*, which analyzes my work in depth). I have also published twenty scholarly articles on the aesthetic significance of gardens and additional articles on environmental aesthetics, as well as numerous academic/professional reviews of seventeen books on these topics (for top journals such as *Notre Dame Philosophical Reviews*, *Landscape Architecture Magazine*, and *The Journal of Aesthetics and Art Criticism*).

Throughout my career I have taught environmental philosophy, aesthetics, and ethics at Drew University and “Gardens, Landscape and Sacred Space” at Emory University, the University of Oregon, and Richard Stockton College of New Jersey, among others, as well as numerous related courses. I have lectured on the subject in China, England, Finland, Germany, and Italy, as well as throughout the United States.

I submit this Declaration in support of Joseph Reiver’s motion seeking an injunction against the City of New York (“the City”) to prevent the destruction of ESG. I am aware that the City intends to demolish ESG to develop a seven-story mixed-use building containing among other things 123 affordable housing studio units known as Haven Green (“Haven Green” or “Proposed Project”) and attest that it is my professional opinion that ESG is a work of visual art entitled to protection from destruction under VARA. It would also harm the community that uses the garden by depriving them of strong artistic positive values in their daily lives.

### **GARDENS CAN BE WORKS OF VISUAL ARTS**

Questions directly relevant to the legal battle over the right of the City to destroy the ESG are addressed at length in my book *The Garden as an Art*.<sup>1</sup> This attempt to destroy the garden carefully created and opened to the public by the late Allan Reiver and his son Joseph Reiver (hereinafter “Joseph”

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<sup>1</sup> Mara Miller, *The Garden as an Art*, State University of New York Press, 1994.

or “Plaintiff”) deprives Plaintiff of his unique work of art and its countless current users of their opportunities for its unique aesthetic, social, cognitive, and artistic forms of experience. This Declaration addresses a number of important questions about the garden’s standing, including whether ESG is a work of visual art and if so, is it a work of recognized stature within the artistic community. That raises the more general question of whether gardens, a type of artwork often overlooked as an art form, may in fact be visual works of art of significance and recognized stature.

It is not my contention that all gardens are works of art. Many gardens lay no claim to such status at all and meet none or very few definitions of gardens as art advanced by the Fenners, Dennis Dutton,<sup>2</sup> myself, or others who have taken a critical aesthetic interest in them. Second, while gardens, by definition, include nature, they also, by definition, are not *only* natural but are designed and created by human beings, and therefore, though nature contributes a great deal to any garden, they owe their existence to human vision and intervention as well.

A number of cultures have long considered their gardens works of art, including China, Japan, India, Persia, eighteenth-century England, seventeenth-century through contemporary France, and others. Also, many gardens have been specifically designed for aesthetic purposes by persons who are widely recognized as artists. Such gardens meet the requirements for works of art of a number of philosophers of art, including David Fenner and Ethan Fenner, Dennis Dutton and myself. ESG does likewise.

#### **DENNIS DUTTON’S TWELVE CHARACTERISTICS OF ART AND HOW ELIZABETH STREET GARDEN MEETS THEM**

According to the late philosopher Dennis Dutton’s theory, gardens are unquestionably works of art. Dutton proposes twelve defining criteria, a combination of which define art. These

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<sup>2</sup> Denis Dutton, *The Art Instinct: Beauty, Pleasure, and Human Evolution* (New York: Bloomsbury Press, 2009).

are “direct pleasure, skill and virtuosity, style, novelty and creativity, criticism, representation, special focus, expressive individuality, emotional saturation, intellectual challenge, arts traditions and institutions, and imaginative experience.”<sup>3</sup> Not all need apply in each case; they are cluster features, a selection of which suffices to make the case, as with Wittgenstein’s “family resemblance.” ESG exhibits *all* of these characteristics.

1. **Direct Pleasure** The direct pleasure afforded by ESG is visual, aesthetic, physical and social.
  - a. **Visually**, it is delightful, with a varied plant list, museum-quality artworks, interaction with the neighborhood, and the pleasures of watching other people interacting and enjoying themselves—and comprising elements in the composition.
  - b. **Aesthetically**, it goes beyond the purely visual, to include aroma, and a wide variety of “feelings,” including: the kinesthetic pleasures of walking along varied surfaces (paved, and grass), and therefore of moving one’s body in different ways pure; touch, which is both the enjoyable variety of surfaces (fuzzy vs. smooth leaves, hard stone vs. more forgiving dirt, smooth marble vs. relatively rough granite, etc.), and the sense of give-and-take in the differing degrees of pliability of stems; and, for children, the experiences of being on different pieces of sculpture.
  - c. **Physically**, it affords pleasurable experiences of light and sunshine, cool, heat and shade, of movement in a safe space, and rest after walking, shopping, etc.

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<sup>3</sup> Dutton, 2009, 52–59.

- d. **Socially**, one doesn't simply watch other people in the garden—although that is an often-remarked component of gardens—one also interacts with them, both strangers and one's family or friends. This is also a direct pleasure of the garden—and contributes to their status as “Social Sculpture.”

The latter two are not always considered necessary features of works of art. But it is widely recognized that many arts frequently (even if not typically) do afford such pleasures. Music, for instance, can contribute to and even generate a sense of communal identity and belonging. The contribution of architecture to physical pleasure is so important that a failure to do so is regarded as a serious fault.

2. **Skill and Virtuosity** All gardens require skill and virtuosity to conceive, to carry out, and to maintain. ESG is a special case in that it also depends on the special knowledge of visual arts and aesthetics of its co-creator Joseph Reiver and of the countless volunteers who maintain it.
3. **Style** Elizabeth Street Garden takes its place within a long-established tradition of garden styles, combining the Euro-American formal garden (fifteenth-eighteenth-centuries), such as straight paths, incorporation of classical and other sculpture as focal points, use of deciduous trees and rectangular flower beds, etc., with elements from the “informal” English landscape garden (eighteenth-nineteenth centuries), in which plants are allowed to grow into their natural shapes without strict pruning, and so on. The inorganic elements of ESG are enhanced and supplemented by the organic elements.

4. **Novelty and Creativity** Novelty and creativity are aspects of what is often called the “uniqueness” of a work of art. This notion has become controversial in an age of “mechanical reproduction,” to use Adorno’s phrase.

Gardens express such novelty and creativity differently from paradigmatic works of art and it is almost impossible to duplicate a garden exactly, since climate, topography, and the surrounding environment have such an enormous impact on it. Though the design of the garden itself is unique, creative, and substantially fixed, the experience of it from moment to moment is constantly changing since natural light, the seasons, plant growth and the presence of insects, birdsong and people vary and contribute to its artistic expression.

ESG is therefore a unique carefully curated creative work of art, incorporating organic and inorganic sculptural elements to create a single unified and thematically integrated sculpture.

5. **Criticism** Gardens in general are at a disadvantage when it comes to criticism, since, being bound to a single location (immoveable/untransportable) their commercial value is limited, and therefore the body of critical analysis devoted to them is minimal. In this case, such critical analysis has been inspired by ESG’s proposed destruction.

6. **Representation** As is evident from the usage of the ESG and the educational purposes to which it is put, ESG represents the cosmos as a whole, the whole natural world, for many viewers. This is especially for school children who play and take classes there. While adults will categorize it as one among natural outdoor experiences of the natural world, it may be the only one of any size that its children enter. This



ability of gardens to represent the world (in various forms) is common to the gardens-as-art from many cultures, including the imperial gardens of France and China.

7. **Special Focus** ESG has three special foci: its incorporation of other works of visual art, its use of borrowed scenery, and its creation of a special place within Little Italy, by means of which it also transforms that space, mere geometric location, into *place*, the subjectively felt sense of being somewhere meaningful and unique.
8. **Expressive Individuality** ESG expresses the individuality of the late Allan Reiver and its co-creator Joseph Reiver, the volunteers who plant or take away plants and other components and prune them, the individual artworks assembled there, and the neighborhood.
9. **Emotional Saturation** ESG affords tranquility and intellectual, emotional, and aesthetic stimulation, which are highly satisfying. Like other successful works of art, one forgets the world outside and can be completely caught up in the immediate environment.
10. **Intellectual Challenge** Gardens challenge us to assemble ideas of the world and our place in it wholistically. They connect us to both the celestial cycles of the sun and the microcosmic lifecycles of insects, worms and flowers. They force us to become aware of our place in history as we consider their historical components and the historically-derived arrangements of the garden itself. They raise questions about the kinds of places we live in.
11. **Arts Traditions and Institutions** In addition to instantiating the garden art traditions discussed in “Style,” above, ESG also participates in the various traditions of the art works it houses, such as the gazebo by Frederick Law Olmsted.



**12. Imaginative Experience** ESG is a place of inspiration for artists, poets, musicians, performers and thinkers of all kinds. This accords with the age-old traditions of inspiration by and in gardens and other natural settings throughout the world.

The imaginative experience ESG provides can be best be understood if we acknowledge the many ways gardens extend and encourage imagination. In Chinese gardens of the Suzhou style, for instance—the Astor Court Garden at the Metropolitan Museum of Art is a fine example—users are meant to let the imagination roam free, to entertain considerations of their relations to historical and artistic predecessors, to imagine future entertainments with the people they know and remember past ones. Such would have been among the purposes of the Suzhou gardens, and such would also have been among those of the museum visitors of the ASG.<sup>4</sup> Astor knew their virtues first-hand, and believed they would not only communicate Chinese customs and values to those who could not learn them first-hand but would stimulate imaginative experience of gardens in China, while providing delightful experience of peace and harmony that was simultaneously aesthetically stimulating to a population that had less and less opportunity to find such on their own, in the hubbub of modern New York City. Children riding the sculptures in ESG can extend themselves in imagination—just as the modernist architect I. M. Pei, the 1983 winner of the Pritzker Prize, did when placed as a child atop the stone lion in Suzhou’s Lion Court Garden, the garden in which he grew up.

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<sup>4</sup> The Astor Court Garden at the Metropolitan Museum of Art was completed in 1981 under the inspiration and guidance of Brooke Astor, who had experienced the originals in China as a visitor; to my knowledge it was the first Suzhou-style garden to be built abroad. Purchase, The Vincent Astor Foundation Gift, 1981; accession number Astor Court.

### **DAVID FENNER AND ETHAN FENNER'S RATIONALE FOR UNDERSTANDING GARDENS AS ART**

David Fenner and Ethan Fenner's *The Art and Philosophy of the Garden*<sup>5</sup> is a thorough, perceptive, and highly-informed analysis of the ways in which gardens are art and contribute to aesthetic experience. After a detailed examination of arguments against gardens as art, eight forms of evidence that support gardens as art, and reasons given by others for their recognition as such (with attention to those of David Cooper and Mara Miller), they propose a series of five conditions a garden must meet to deserve this status:

1. Its aesthetic properties, broadly construed, cohere together in a form that optimally rewards aesthetic attention . . . ;
2. it exemplifies the character of art as described in theories of the nature of art, for instance mimetic, expressivist, or "continuity" theories;
3. it rewards typical interpretive attention and in at least that sense is cognitively engaging;
4. it exemplifies "style" as defined above [in their book]; and
5. it is profitably the subject of structured and principled art-critical attention (p. 124).

The book as a whole is an argument for gardens, and thus ESG, as art.

### **MILLER'S CRITERIA FOR GARDENS AS ART**

My own criteria are somewhat different from Dutton's, given that I was concerned with gardens specifically, not all kinds of arts. In my book *The Garden as an Art* I argued first, that gardens are works of art because, in accordance with the general popular sense of artworks, they are formally excellent, bring aesthetic pleasure, and have the additional requirement of enduringness (Miller, p. 140).

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<sup>5</sup> *The Art and Philosophy of the Garden*, Oxford University Press, 2024.

Because gardens are also comprised of living things and other natural elements, it was necessary to make the further argument that, while “natural,” gardens are also the product of human intention and effort, are, in fact, “artificial” always to at least some modest extent.

**ARE GARDENS—AND THE ESG—*VISUAL* WORKS OF ART?  
ESG AS A *GESAMTKUNSTWERK***

Gardens of many styles incorporate other arts: most commonly sculpture and architecture, music and dance concerts, theatre, tea ceremony, and/or poetry. The sculpture and architecture of Versailles’ garden, for example, are critically important to its aesthetic and other effects, and even to its identity. Such compilations of arts were admired in the nineteenth century as *Gesamtkunstwerke*, of which the prototypical form is opera—and no one claims opera is not art.

Chinese gardens, similarly, are quintessential *Gesamtkunstwerke*, for they invariably combine poetry and its calligraphy, either carved or written, two- or three-dimensional visual representations of landscape and/or other gardens, and architecture, both that of the home to which they belong and its walls, but also of pavilions, bridges, walkways and tunnels built specifically for the garden. In addition, they utilize aesthetically resonant natural objects such as rocks, whose aesthetics are often improved by carving or other treatment. In addition, like so many garden styles, Chinese-style gardens are venues for performance with friends —music-making, of course, but also poetry-writing, and painting and calligraphy, as well as the shared experiencing of such works. Food and drink also play important (often overlooked) roles: the serving of tea with tasty snacks, and alcohol. Finally, like Japanese stroll gardens and tea gardens, eighteenth-century British landscape gardens, and even French formal gardens, their beauty is enhanced by the appearance of suitably dressed and comported human visitors.<sup>6</sup>

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<sup>6</sup> See David Marshal, *Figures in the Landscape: Notes on the Ideology of the Picturesque*, Symposium on Land and Landscape in the Eighteenth Century, Yale Center for British Art, New Haven (April 1983).

Gardens' status as *Gesamtkunstwerk* may seem to push them outside the boundaries of visual art per se, but this is not so, because the visual is essential to gardens in ways it is not essential to, for example opera. While opera may be understood and appreciated purely as music, and one may be an opera lover without ever having seen a performance, gardens cannot be understood or appreciated without recognition of their visual features and aspects—even though those visual features may be understood and appreciated by the blind. Flowers may be enjoyed for their fragrance; the arrangements and surfaces of paths may be recognized through the motion of our bodies and their tactile qualities as we step on and through them. But these qualities would not exist without their visual concomitants. Museums are one of the *Gesamtkunstwerke* most similar to gardens, both as works of architectural art themselves, as places for the display of other arts, especially visual and performing arts, and as complex, nuanced, and sophisticated means of communicating cross-cultural and historical information, knowledge, perspectives, and understanding.

While ESG is a work of art, it is not *only* visual. As with most gardens, sound, smell, and a wide variety of tactile, kinesthetic, and proprioceptive characteristics, and even taste (if only in imagination) contribute to its success. These are not reasons to dismiss it as distinctively visual art, since other complex artkinds, such as dance and architecture, also are multi-sensual.

As with sculpture, however, visual pleasure is paramount at ESG, and in several ways:

- a. The experience of sunlight and its interplay with shadows is crucial here.
- b. Of course, the flowers, trees, berries, birds, fireflies and ladybugs and amazing sources of visual pleasure, considered separately and then especially in their interweavings, the overall composition of the garden.

- c. Many of its components are visual works of art, that therefore contribute to the importance of the visual aesthetics.
- d. The “Borrowed Scenery” (called *shakkei*) provides an enlivening contrast with the natural elements in several ways.

### **THE SOCIAL SCULPTURE OF JOSEPH BEUYS**

Building on the notion of *Gesamtkunstwerke* and the ideas of Romantic writers like Novalis and Schiller, renowned German artist Joseph Beuys proposed an expanded category of conceptual art in which human beings and their intrinsic capacity for creativity and change themselves comprised artworks in conjunction with each other and the physical world, perhaps most noticeably the natural world. Highly idealistic (it was related to Germany’s Green Party), it aimed for social, economic, and political restructuring as well as aesthetic expansion; among its most famous works is that for Documenta 7, involving basalt stones and requiring the planting of seven thousand oak trees in Kassel, Germany. Given ESG’s propensity for encouraging and facilitating positive social action and interaction, one can see that it, too, constitutes an example of Social Sculpture.

### **IS ESG *GREAT* ART? MILLER’S CRITERIA FOR GARDENS AS GREAT ART**

Beyond this, gardens—such as the ESG—should not just be tolerated as lowly, poor cousins of “real art,” the way we often consider young children’s painting to be “art” even though its quality is far below that of Matisse or Louise Bourgeois.

Rather, gardens can in many cases be considered *great* works of art. This is because they demonstrate “significant human content”—a criterion for great art widely accepted by philosophers (Miller, ch. 8), by which we mean it deals with important human issues. An example would be the way, at the very least, ESG clarifies for viewers the cycle of life and death, of maturation and ripening, of plant and animal life. While contemporary children may have opportunities to experience death of pets

and family members, they often have little chance, due to their few years, to experience the *cycle* of life and rebirth.

I maintain that significant human content is not itself sufficient to make a work of art great, however. To be great, the work's form must be *adequate to its content*. In spite of their significant human content, if you want to address the nature of grief or joy, just saying "I am so sad that he died; I am devastated" or "I am so happy to have experienced communion with God!" neither makes your words art nor gives the listener an aesthetic experience. Brahms's *Deutsches Requiem* does convey grief, however, because of the form it gives to its content.

Many gardens also embody and convey significant human content with form that is "adequate to the content" (Miller, p. 140). Some examples are:

- ❖ Versailles, for instance, demonstrates relationships among the king's political order, the physical land of the state, and the religio-mythic order of the ancient Greeks and Romans.
- ❖ Chinese gardens in the Ming Dynasty style of Suzhou (the models for those built recently in Vancouver, Otago, New Zealand, New York City, and other international cities), reveal significant human content by:
  - making evident and furthering the understanding of time, history, and one's place in history;
  - establishing and reinforcing human connection across space and time (as well as within the garden's microcosm;
  - drawing attention to our relationship to aspects of the natural and social environments that are drowned out in the cacophony of mundane affairs.
- ❖ Stowe represented the political views of the Opposition party in 18<sup>th</sup>-century England;

- ❖ Closer to home, largely because of its setting within the grounds of a church, St. Luke's Garden in the West Village is able to connect nature—the roses—with both the visitor's mood and current life events and the religious tradition of Christian monotheism.

### **SIGNIFICANT HUMAN CONTENT IN ESG**

The ESG embodies and communicates significant human content in five ways:

- ❖ It creates a sense of place for the Little Italy neighborhood of Manhattan. The place it creates is unique; it is its own place. It is meaningful.
- ❖ It enables viewers to experience the seasons more fully, and the daily cycle of sunlight and darkness, which have been meaningful to human beings (and most living things) for hundreds of thousands of years, but which we are increasingly unable to experience.
- ❖ It demonstrates the notion of human caring, which social scientists—and even, more recently, police departments and politicians—have come to recognize changes our quality of life, even when the caring is not directed at us as individuals, that is, even when we simply observe it directed at others.
- ❖ It makes available the experience of comfort. While this is valuable in many situations, it is especially valuable in a city. The comfort it avails is physical: places to sit, quiet.
- ❖ It exemplifies and instantiates beauty and tranquility.

## CONCLUSION

We may conclude that ESG, by integrating sculptural inorganic elements and organic elements to create a single unified and thematically integrated sculpture, coupled with its characteristics as both social sculpture and *Gesamtkunstwerk*, both long respected and highly regarded categories of high art, not only fits the Fenners's, Dutton's, and Miller's definitions of artworks, but that it is also essentially (though not exclusively) a work of visual art, and a great work of art. It must, therefore, be preserved.

Washington, D.C.  
October 17, 2024

A handwritten signature in black ink, appearing to read "Mara Miller", written over a horizontal line.

Mara Miller



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOSEPH REIVER,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.

CIVIL ACTION NO.

## DECLARATION OF KLAUS BIESENBACH

I, Klaus Biesenbach, under penalty of perjury, state the following:

## 1. Personal Background and Professional Career

1.1. My name is Klaus Biesenbach, and I am the director of the Neue Nationalgalerie and Berlin's Museum of Modern Art, currently under construction, called Berlin Modern, located in Berlin, Germany.

1.2. I previously served as the director of the Museum of Contemporary Art (MOCA) in Los Angeles and, prior to that, I was the director of MoMA PS1 and I was a chief curator at the Museum of Modern Art (MoMA) in New York for many years.

1.3. Earlier in my career, I was the founding director of the Berlin Biennial and the KW Institute for Contemporary Art in Berlin. I have received various international art critics awards, the German Order of Merit and other awards including honorable mentions from the New York City Council for my contributions to the city.

## 2. Elizabeth Street Garden (hereinafter, the “Garden”) as a Physical Sculpture Installation.

2.1. In my professional opinion, the Garden is a sculptural installation, due to its neoclassical design, its deliberate arrangement of sculptural elements, and its artistic vision.

2.2. The Garden is composed of many elements including stone urns, statues, columns, and other neoclassical architectural features, all of which have been strategically placed to create a harmonious environment. These elements work together as an indivisible whole, forming a physical sculptural installation that draws upon classical traditions while merging with its surrounding natural environment.

2.3. I believe that the interdependence between the natural elements—trees, plants, and flowers—and the sculptural forms is an important aspect of the Garden’s integrity. This relationship accentuates the classical beauty of the sculptures and enhances their visual impact.

2.4. The Garden’s significance as an installation has been widely recognized by the public, media, and prominent figures, all of whom have advocated for its preservation through letters to the mayor and public endorsements. This widespread recognition elevates the Garden to a position of recognized and public stature.

### 3. The Garden as a Social Sculpture

3.1. The term “social sculpture” was coined by the pioneering German artist Joseph Beuys. It refers to the idea that art is not confined to physical objects or traditional media but can be a collective and participatory process in which society itself is experienced and shaped as an artistic medium. Beuys believed that social interaction, community involvement, and public engagement are the materials for creating this kind of social sculpture.

3.2. Drawing from this concept, I see that the Garden is not only of a physical sculptural beauty but, at the same time, with its extensive public programming and community engagement, it has become a living social sculpture, engaging community members as active participants in its evolving artistic narrative. It is an example of a social sculpture, deeply tied to the public's memory in its interaction, communal stewardship, and the environment.

3.3. The Garden represents to my mind more than just a collection of plants, sculptures, and installations. The local community, through its use, care for, and active defense of the space, has become an integral part of the expanded concept of an artwork. Volunteers, visitors, and organizers contribute to this ongoing, collective creative process. However, it is crucial to note that the main artistic vision—the design and arrangement of the space—was developed by Joseph Reiver and his late father. While the Garden invites public participation, the artistic intent stems from the authors’ careful and deliberate decisions.

3.4. The Garden, as a social sculpture, holds recognized stature not only in its visual beauty but in its holistic integration of creativity, artistic intent and environmental stewardship. It is more than the sum of its parts; it is a continuous, interactive artwork that reflects the vision Reiver established. Elizabeth Street Garden evolves over time, shaped by the interactions between people, the environment, and the artistic elements within it, in alignment with Beuys’ philosophy that art can transform society by creating a deeper bond between the community and nature.

3.5. The Garden evolves through the interaction between the community, the environment, and

the artistic elements within it. This dynamic interaction is a key aspect of social sculpture, as it allows the space to transform over time. As the seasons change and the community engages with the space, the Garden becomes an ever-evolving artwork, shaped by participation.

3.6. The Garden, as a social sculpture, holds cultural and social importance beyond its physical components. The relationships formed within the Garden and the social activism surrounding its preservation have become integral parts of the work itself. Destruction of this space would dismantle the fabric of this living, evolving work of art, impacting its social and artistic value.

3.7. The public programs hosted in the Garden reflect the principles of social sculpture, transforming the space into a hub of artistic and communal activity. Through these programs the Garden fosters community-building, education, and social engagement, further cementing its role as a social sculpture. Events such as the Earth Day celebrations and other seasonal events curated in collaboration with Jesse and Patti Smith highlight the Garden's influence in creating opportunities for the public to interact with art and nature.

#### 4. Conclusion

4.1. Based on my extensive experience in modern and contemporary art, as well as my curatorial understanding of social sculpture, I affirm that the Garden is a cohesive work of visual art that encompasses both physical sculptural elements and participatory, social dimensions.

4.2. Destruction of the Garden would violate its role as a community based social sculpture, it would harm its artistic integrity, disrupting the delicate balance between its sculptural and natural elements. The Garden is a testament to the power of art to engage with society and learn with communities, and its preservation is essential for future generations to experience its cultural and artistic value and significance for the communities around it.

October 17, 2024

  
Klaus Biesenbach

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH REIVER,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.  
-----X

CIVIL ACTION NO.  
\_\_\_\_\_

**DECLARATION OF JR**

I, JR, under penalty of perjury, state the following:

**1. Personal Background and Professional Career**

1.1. My name is JR, born on February 22, 1983, in France. The name "JR" is derived from my initials, which I have used throughout my career while maintaining anonymity due to the fact that my early work was not always officially approved.

1.2. I am a contemporary artist, widely recognized for large-scale public art projects that blend photography and public art.

1.3. My artistic career began as a graffiti artist in the streets of Paris. After discovering a camera in the Paris Metro, I transitioned into photography, merging it with public art.

1.4. My works engage communities globally and inspire reflection on social, political, and cultural issues.

**2. Site-Specific Art**

2.1. My art is deeply rooted in the concept of site-specificity, where the location of a project contributes to its meaning and impact.

2.2. The environment significantly shapes the reception of each artwork, transforming ordinary spaces into thought-provoking experiences for the public.

2.3. My projects are carefully selected to address issues relevant to local communities, creating a dialogue between the artwork and its surroundings.

### **3. Notable Projects**

#### **3.1. Historic Monuments in Italy**

In 2021, I executed a large-scale trompe-l'œil installation at the Palazzo Farnese in Rome. The artwork gave an illusion, challenging perceptions of history and contemporary art.

#### **3.2. Louvre Museum in Paris**

Also in 2016, I covered the Louvre's iconic glass pyramid with a photograph that created the illusion of the pyramid disappearing into the background, sparking conversation about the intersection of art, architecture, and history.

#### **3.3. Brooklyn Museum in New York City**

In 2019, I completed a project titled *The Chronicles of New York City* presented at the Brooklyn Museum. The installation featured over 1,000 portraits of New Yorkers, celebrating the city's diversity by turning the institution's facade into a public storytelling canvas.

#### **3.4. US-Mexico Border**

In 2017, at the US-Mexico border, I installed *Kikito*, an image of a child peering over the border fence. This piece addressed the human element of the immigration debate, prompting a conversation on shared humanity beyond political boundaries.

### **4. Discovery of Elizabeth Street Garden**

4.1. I first discovered Elizabeth Street Garden when I moved my studio into the neighborhood.

4.2. The garden captivated me with its peaceful and enchanting atmosphere, a stark contrast to the surrounding urban environment.

4.3. The blend of natural beauty and artistic elements inspired me to engage with the space and contribute to its unique environment.

### **5. Elizabeth Street Garden as an Artistic Environment**

5.1. Elizabeth Street Garden is a distinctive artistic space that transports visitors out of New York City's urban landscape into a lush, immersive setting of art and nature.

5.2. The garden's carefully curated combination of greenery, antique sculptures, and layout has inspired artists and visitors alike.

5.3. Given my background of working on historic sites, I view the garden as a living work of art, with the combination of sculptural and natural elements creating a unified artistic expression.

## **6. Personal Work with Elizabeth Street Garden**

6.1. In 2013, I installed my first piece in Elizabeth Street Garden on an adjacent building wall, visible from both the street and the garden. The artwork depicted a photograph of a young girl looking out of a window, captured by renowned photographer Martha Cooper.

6.2. Cooper, best known for documenting New York's graffiti and street art culture in the 1970s and 1980s, created an image that appeared as if the girl was gazing over the garden, symbolically connecting the artwork with the natural space. (Exhibit 1)

6.3. In 2018, I created another piece featuring a photograph of a young garden volunteer and neighbor. This artwork was installed on another adjacent building wall, depicting the girl holding onto a large tree. (Exhibit 2) This piece was designed to symbolize the community's fight to hold on to nature by saving the garden.

## **7. Community and Global Recognition**

7.1. Elizabeth Street Garden fosters a vibrant artistic community, inspiring local and international artists to create work that interacts with the space's unique environment.

7.2. The global recognition of the garden underscores its importance as a transformative artistic and community space, much like the historic sites I have worked on worldwide.

7.3. The sculptures and architectural elements within the garden are not merely decorative but integral to its identity as a work of visual art. The careful placement and selection of these elements resonate with my work on monumental sites like the Pantheon or the Louvre.

## **8. Affirmation of Elizabeth Street Garden as Visual Art**

8.1. Based on my extensive experience working with historical monuments and sculptures, I declare that the form, selection, and placement of sculptural elements in Elizabeth Street Garden constitute a cohesive work of visual art.

8.2. The thoughtful integration of these elements with the garden's landscape creates an impactful artistic expression.

8.3. It is for this reason I was drawn to create two site-specific works of temporary art in relation to the garden, intending to interact with and enhance its existing art, further contributing to its artistic narrative.

Date: October 17, 2024

A handwritten signature in black ink, consisting of a series of loops and a final downward stroke, positioned above a horizontal line.

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JR

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH REIVER,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.  
-----X

CIVIL ACTION NO.  
\_\_\_\_\_

**Declaration of Jeffrey L. Brodie**

I, Jeffrey Brodie, under penalty of perjury, state the following:

**Personal Background and Professional Career**

1. I, Jeffrey Brodie, was born in Livermore, California, United States. I hold a Master of Arts in History from the University of Connecticut and a Ph.D. in History from The George Washington University.
2. My work is deeply rooted in a passion for and understanding of history. Curating and designing exhibitions, as well as developing educational programs that highlight and teach our history, are essential components of its preservation.
3. I worked at the Smithsonian Institution for over 30 years. This time included curating exhibitions, serving as the project manager for capital and conservation projects and developing educational and public programs at the National Museum of American History and the National Postal Museum. In addition, I served as Deputy Director and Acting Director of the Smithsonian Institution's Lemelson Center for the Study of Invention and innovation at the National Museum of American History for over 17 years.
4. Since February 2024, I have served as Vice President for Museums at the Heinz History Center, recognized as the #1 History Museum in America by readers of *USA Today*.

**The Importance of Space in Innovation**

5. My experience in these institutions has underscored the value of spaces and places that bring together diverse people, skills, knowledge, and ideas to explore subjects from



multiple perspectives. Providing these kinds of community environments where all feel encouraged, safe, and welcome to share their ideas with others accelerates innovation.

6. Moreover, in my experience, encouraging the interaction of people with expertise in disparate fields—such as science, technology, art, engineering, urban planning, and medicine—leads to new discoveries along unanticipated pathways.
5. On a more individual level, much of my work and research, as well as that of the Lemelson Center, focuses on innovation as a human, creative process. This research seeks to understand the factors that promote or inhibit innovation. Among these factors is the importance of place—promoting the right combination of creative thinkers, natural resources, capital, labor, places to gather, and opportunities to share ideas—that lead to new advances and innovation.

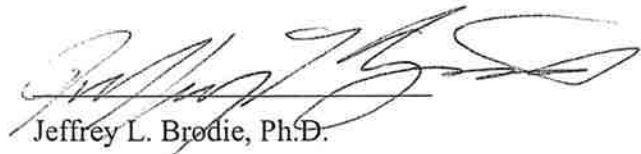
#### **Elizabeth Street Garden as a Work of Art**

8. Based on my background and expertise, and the information provided to me concerning the Elizabeth Street Garden, I can affirm that intentional interplay between art, natural beauty, and community programs has the strong potential to promote the exchange or new ideas and perspectives that accelerate innovation – this dynamic is seen in different locations throughout the United States at many different points in history. The assorted pieces of reclaimed sculpture and plantings in the Elizabeth Street Garden work together to create a living, breathing work of art that visitors can walk through and sit among. The interplay of natural elements with curated sculptures creates a dynamic environment that evolves with the seasons, offering a continuously changing experience. This type of environment has the potential to become more than just a collection of individual pieces; it has the power to create a cohesive, immersive artistic creation that invites engagement on both a visual and emotional level. As someone who has spent years curating exhibitions and designing spaces that tell a story, I recognize the intentionality behind the garden's design. Every element—from the placement of sculptures to the selection of plants—contributes to a narrative that speaks to the garden's historical, cultural, and artistic significance.
8. As a work of art, the garden promotes an environment that fosters a sense of community and artistic expression. It serves as a living canvas where people of diverse interests, backgrounds, skill sets, and knowledge come together in dialogue and artistic experience. The garden's design encourages visitors to explore and interact with the space, making it not just a passive experience but an active one. This interactivity is a hallmark of effective public art, as it transforms a static space into a vibrant hub of creativity and community engagement. My work at the Smithsonian and other institutions has shown me the power of such spaces to bring people together in meaningful ways, facilitating conversations that might not occur in more conventional settings.
8. Because of this, the Elizabeth Street Garden is a space that can promote the exchange of ideas, leading to the formation of new experiences, new perspectives, and new solutions to community challenges. The garden's unique combination of art, nature, and community engagement makes it an ideal setting for fostering innovation. It provides a space where people can come together to reflect, create, and collaborate in a way that is often difficult to achieve in more structured environments. By offering a place of respite and inspiration, the garden helps to cultivate the creative thinking necessary to address

the complex challenges facing our communities today. My extensive experience in museum and educational programming has demonstrated that environments like the Elizabeth Street Garden are crucial for nurturing the kind of interdisciplinary dialogue that leads to new ideas and breakthroughs.

9. The opinions and judgments expressed in this declaration are my own, reflecting 30 years of experience creating new methods for bringing diverse audiences together in conversation and exploration and do not constitute endorsements from the Smithsonian Institution or Heinz History Center.

October 14, 2024



Jeffrey L. Brodie, Ph.D.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
JOSEPH REIVER,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.  
-----X

CIVIL ACTION NO.  
\_\_\_\_\_

**DECLARATION OF NOAH CHASIN**

I, NOAH CHASIN, under penalty of perjury, state the following:

**Background**

[1] I am an art and architectural historian with joint appointments at Columbia University's Graduate School of Architecture, Planning, and Preservation (GSAPP) and at the Institute for the Study of Human Rights. My expertise is in post-conflict urban reconstruction, but also the human rights implications of urban public space. I have also maintained a 30-year career as an art and architecture critic, dealing exclusively with the modern and contemporary periods.

[2] I submit this declaration in support of Joseph Reiver's motion for a preliminary and permanent injunction to enjoin New York City from destroying, distorting, mutilating, or otherwise modifying Elizabeth Street Garden.

[3] I assert that the Garden constitutes a sculptural work that falls under the protection of the Visual Artists Rights Act (VARA).

### **The Garden as Artwork**

[4] Many precedents for gardens as fully conceived artworks unto themselves exist, from Sri Lanka's Sigiriya of the 5<sup>th</sup>c. BCE, to the 11th-century sites at Suzhou and Westminster Abbey, to the mid-15th-century gardens at Ryōan-ji, and—perhaps the best-known example—the 17<sup>th</sup> century Gardens at Versailles. A more recent example would be the Jardin Majorelle in Marrakech, Morocco (1923). What ties all of these together are several structural factors and conditions:

1. They serve the general public
2. They support salubrity and well-being through the provision of access to light and air and to the quietude of a space unhindered by technological progress
3. They are all spaces uniquely identified as both gardens and as total works of art in their own right.
4. They intentionally activate the potential for contemplation and solemnity through a variety of sensorial forces, including visual, tactile, olfactory, and aural.
5. They are unique and specific to the site on/for which they initially were conceived, embodying spatial qualities that are non-transferable.

[5] Elizabeth Street Garden meets all of the aforementioned criteria. It was conceived as a unified whole by its designers, and as such, constitutes a deliberate act of artmaking as would be recognized by any trained artist or art historian, and surely by many members of the public that it serves.

### **The Garden as an Integrated Sculptural Artwork**

[6] Art historians and critiques are in near unanimous agreement that integrated sculptural works may well (and often do) constitute a single work of art especially when the placement of individual elements contributes to a unified artistic intention. Authorship derives as much from the selection and placement of objects in/on a given site as it does from the act of making an object. The recognized artistic practices of assemblage and bricolage, in particular, rest on this exact process: an intentional and deliberative decision to bring together a group of objects (recognizably related or not) to comprise a new, complete whole whose integrity is confirmed by the presence of all chosen elements. The work of Thomas Hirschhorn (e.g. *Musée précaire Albinet*, 2004) is instructive here.

### **The Concept of Site-Specificity**

[7] One must invoke the concept of site-specificity in this case. Because the work was conceived for and on the current site of the Elizabeth Street Garden, following the core tenets of site specificity, if the work is either altered or displaced, it ceases to exist.

Art historian and recognized authority on site-specificity Miwon Kwon has written that " . . . a central objective of community-based site specificity is the creation of a work in which members of a community—as simultaneously view/spectator, audience, public, and referential subject—will see and recognize themselves in the work . . . rather than artworks that are separated or detached from the space of the audience, which reinforce social alienation and disaffection, once should sponsor works that reassure the viewing subject with something familiar and known... Therefore, the task of "reassur[ing] the viewer with an easily shared idea or subject is best accomplished when the idea or subject of the artwork is determined by the community or better yet if is the community itself in some way." In other words, site specificity

not only fixes a work in time and space but also requires that the viewing public be active participants in creating its meaning and its status as an artwork. The Garden certainly fulfills this definition's obligations. [C.f. *English v. BFC&R E. 11th St. LLC*, where site-specific integration of art can be considered a single work.]

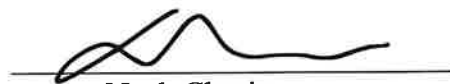
[8] A mere nine blocks from the Elizabeth St Gardens lies the site of Alan Sonfist's Time Landscape commissioned in 1978 by the New York City Department of Parks & Recreation's Greenstreets program. It bears a conceptual resemblance to the Garden, though at 9000 square feet is less than 1/2 the size of the Garden. The project comprises various flora that the artist's research showed to have existed on the island of Manhattan before its Dutch colonization. It does not immediately announce itself as an artwork—few even acknowledge it as more than a verdant square of land on West Houston St.—but is described by Sonfist as “. . . an indigenous forest that will continue to change and reflect the environmental conditions of the city and its population as the landscape evolves.” Here the site-specificity is secondary to its definition as an artwork comprised of discrete elements chosen by the artist and put into deliberate dialogue with one another, though also with the understanding that it can and must change with time.

### **Conclusion**

[9] In summation, the principles of “social art,” are most famously conceived and espoused by German artist Josef Beuys. The argument holds that sculpture, when “gifted” to the public through accessibility, and organized in such a way that its constitutive elements *include* not just the composite parts but also—notably—the act of public engagement, has the power to have a transformative effect on its public through dialogic means. Though often political in a contemporary context, one can retroactively assign the term “social art” to the gardens mentioned above in Part 4. The inevitable effects of time and space on the composite sculpture

and its site are expected and embraced, if not easily anticipated (given that any public work is subject to changes in its environment). Thus, the fluidity in terms of meaning is essential but in no way undermines the totality of the artwork—from conception to reception. The interaction of the public with an artwork is the vital aspect that maintains the work’s integrity.

New York, New York  
October 16, 2024



Noah Chasin

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

	X	
JOSEPH REIVER,	:	
	:	CIVIL ACTION
	:	NO.
Plaintiff,	:	
	:	
	:	
	:	
-against-	:	
	:	
	:	
THE CITY OF NEW YORK,	:	
	:	
Defendant.	:	
	:	
	:	
	X	

**DECLARATION OF PATTI SMITH**

I, Patti Smith, under penalty of perjury, state the following:

**Personal Background and Professional Career**

1. I, Patti Smith, was raised in South New Jersey and migrated to New York City in 1967. I am a New York-based writer, performer, and visual artist.
2. I first gained recognition for my work in the 1970s, performing in local venues, merging poetry and rock 'n' roll with my band, with whom I would go on to record 12 albums. Our first album, *Horses*, which was recorded at New York City's iconic Electric Lady Studios, was inducted into the National Recording Registry at the Library of Congress in 2010 by the National Recording Preservation Board.



3. Our subsequent albums include *Easter*, which featured "Because the Night," co-written with Bruce Springsteen, and *Dream of Life*, which included "People Have the Power," an anthem used for various humanitarian and ecological movements.
4. My career as a recording artist includes extensive collaborations and recognition, including four Grammy® Awards nominations, a Golden Globe nomination, and being inducted into the Rock and Roll Hall of Fame in 2007. New York based filmmaker Steven Sebring's 2008 documentary, *Patti Smith: Dream of Life* received an Emmy Awards nomination.
5. Outside of New York City, I was awarded the title of Commandeur des Arts et des Lettres and the Legion of Honor by the French Republic.
6. In addition to music and writing, I have had an extensive career in the visual arts, working with mediums such as photography, painting, and sculpture installations, creating works and executing diverse collaborations with other artists exhibited in galleries and museums in New York City, nationally, and globally. My most recent large-scale exhibition, *Evidence*, ran at the Centre Pompidou in Paris from October 2022 to March 2023, continuing on to museums in Mexico and Lisbon. Exhibitions in New York City have included nearly 20 solo exhibitions with Robert Miller Gallery, as well as solo and group exhibitions with MoMA, Rockaway Artists Alliance, Gagosian, and most recently with Kurimanzutto.

#### **New York City**

7. Like other artists, I often draw inspiration and energy from New York City's iconic places and the people who inhabit them. As a writer, I have written and published nearly a dozen books, many of which were written in cafes and public spaces in New York City, where I find solace and feel most inspired. Upon its release in 2010, my book *Just Kids*, a memoir set in New York City in the 1960s and 70s, became a New York Times Best Seller and winner of the National Book Award for Nonfiction. It was also voted as the 2019 winner of the New York Public Library's annual *One Book, One Read*, in which citizens of New York are encouraged to read one book together throughout the year.
7. In 2021, I was awarded the Key to the City by Mayor de Blasio.
7. When I first moved to New York City, I worked in its iconic bookstores, Scribner's and The Strand. While few of the bookstores, cafes, and other establishments I loved at that time still remain, the ones that do are the lifeblood and character of our city that keep me living and working here all these decades later.
7. As a performer, I have always enjoyed playing concerts in New York's music venues and cultural institutions. Larger venues like Carnegie Hall, Madison Square Garden, Barclays Center, Lincoln Center, Beacon Theatre, Webster Hall, Bowery Ballroom, Brooklyn Academy of Music, Town Hall. Institutions and museums such as the Metropolitan Museum of Art, MoMA, The Morgan Library and Museum, and smaller, more intimate

spaces as well. Whether a concert is planned or spontaneous, I have always made a point to perform for New Yorkers and their energy always encourages and inspires me forward.

7. When I first emerged as a poet and artist, it was New York City that embraced and welcomed me, allowing space to become the performer I am today. I had my first poetry reading at St. Mark's Church in 1971, going on to perform at various spaces and venues downtown, unique platforms created by artists and business owners to foster a unique artistic community, the one that has made NYC the iconic place of history it is known for today.

### **Elizabeth Street Garden**

8. The Elizabeth Street Garden reminds me of the places that first welcomed me as an emerging artist. The Garden is much more than a public greenspace. Its social component is equally significant in value. The garden offers a platform for emerging artists, for cultural and community building, for expanding artistic expression.
9. On a busy day, it is a center for community gathering, a place to perform, to share work, and to speak out against injustice. A destination to find collaborators and to discover new art, to find inspiration and hope.
10. On a quiet day, it is a place to find solace, an oasis of quiet in our city. A place where artists and writers are left undisturbed to tap into imagination, to access deep levels of creativity and inspiration to do their work while being surrounded by a safe and warm-hearted community. It is a place welcome to all.
11. The exact ripple effect of this cultural value is immeasurable and incalculable, though it can be stated without question that unique gathering spaces have a major influence on quality of life and the thriving of neighborhoods. There is no doubt that the areas of New York City surrounding the Elizabeth Street Garden have been made better over the years due in significant part to its existence and the positive impact on its residential neighbors and local businesses. This can absolutely be measured by the thousands of collective and individual letters of petition pouring in over the recent months defending the garden and its cultural and community influence. In this way, the garden itself has been a gift to the city, something to celebrate and duplicate, not eradicate.

### **My Connection with the Garden**


12. I first discovered the Elizabeth Street Garden with my daughter Jesse, as a neighbor and resident of Soho. The garden became a destination during our walks, a place to rest, to find quiet, talk with each other, and feel restored by nature.
13. I was drawn to the garden because of its greenery, the ivy and the fig tree, but even more so because of its Neoclassical and Gilded Age sculptures. Being there made me feel immediately as though I was transported to another time. In this way, the garden is truly

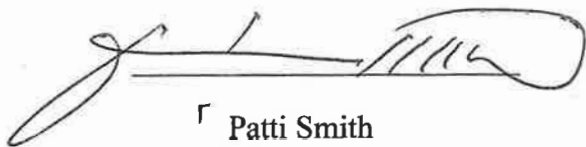
unique, unlike any other public greenspace in NYC, or anywhere I can think of. It is a work of art in its own right.

14. I first performed there in 2021, singing with my daughter on keyboard and my guitarist Lenny Kaye, under the Olmstead Gazebo for a public event aimed at raising awareness around the importance of preserving the garden when the city first moved to evict it. The event, which hosted over 600 visitors, included many concerned musicians, artists, non-profits, activists, and local businesses, all eager to do everything possible to protect this oasis of nature and culture within our changing city.
15. Since 2021, I have performed in the garden several times, for events with the same urgent mission, and for other events on the garden's annual calendar, including an Earth Day celebration in April which hosted around 300 visitors.

### **The Garden as a Work of Art**

16. The Elizabeth Street Garden is not only an oasis of greenspace within our city, but it is a work of art in its own right, a work that transports its visitors to another time, another place, somewhere far away.
17. The garden allows its visitors to daydream, to be with their own thoughts, and to enter into distant realms. Being in the garden, one feels completely transported, much like when visiting a favorite painting or sculpture in a museum, getting lost in a favorite book.
18. At the garden, visitors and performers alike can interact closely with the art. These works of art energize us, inspire us to do our own work, and give us hope. They are irreplaceable. Combining the greenspace element, the cultural and social platform components, and the physical sculptures, this garden is its own highly unique artwork, one with the exemplified power to transform its neighborhood, having a ripple effect on New York City and our collective society. In an effort to cultivate greater health and wellness in our city's neighborhoods, the Elizabeth Street Garden should be protected, celebrated, studied closely, and multiplied. The future of New York City is in our hands.
19. In a continued effort to fight for the garden's preservation, I have sent a letter to Mayor Eric Adams, urging him to protect and save it from destruction.

January , 2025

  
Patti Smith